



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 19, 1996

Mr. Joel V. Roberts
City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR96-2147

Dear Mr. Roberts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37810.

The City of Odessa (the "city") received a request for "[a]ny information regarding a police investigation of [an individual], who was accused in a civil suit of sexual assaulting of former employee on March 27, 1987." You claim that the requested information is excepted from disclosure under sections 552.101 and 551.107 of the Government Code, the judicial decision in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.-- El Paso 1992, writ denied), and the informer's privilege. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses both common-law and constitutional privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

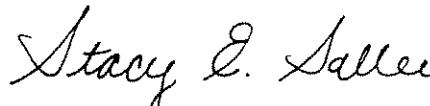
information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has found that the identities of victims of sexual abuse or the detailed description of sexual abuse are excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the documents submitted for our consideration and have marked the information that must be withheld under common-law privacy.¹

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107(2) excepts from disclosure information that is made confidential by court order. We have reviewed the submitted information and conclude that none of it is protected under section 552.107.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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Ref.: ID# 37810

Enclosures: Marked documents

¹As we have concluded that the information which the city claims is protected by the informer's privilege and *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.-- El Paso 1992, writ denied) must be withheld under common-law privacy, we need not address the city's arguments with regard to these claims.

cc: Mr. Gary Newsom
Odessa American
P.O. Box 2952
Odessa, Texas 79760-2952
(w/o enclosures)